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ABSTRACT

The purpose of this module is to synthesize technical information on federal mandates on education for the handicapped and to present the information in a format that can be adapted for use with teachers, administrators, school board members, or parents. Activities for use in workshop settings are designed to: (1) increase knowledge and understanding of pertinent federal legislation, federal regulations for implementing the laws, and court decisions interpreting the laws; (2) increase sensitivity to potential problems in implementing the legal mandates and to the mandates' implications for public educational process; and (3) enhance skills in analyzing institutional forces that inhibit or facilitate the attainment of specific provisions of Public Law 94-142 and section 504 of the Rehabilitation Act of 1973 and in designing plans to implement legal mandates. The introductory lecturette discusses litigation and legislation, including right to access, right to accurate classification, and right to appropriate programs. Sessions on Public Law 94-142 and Section 504, action plans, and case situations list goals, processes, and materials. (JD)

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Initiating Change Through Inservice Education:
A Topical Instructional Modules Series

FEDERAL LEGISLATION ON BEHALF OF HANDICAPPED CHILDREN:

IMPLICATIONS FOR REGULAR EDUCATORS

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I. CONTEXT/INTRODUCTION

During the past two decades judicial and legislative intervention on behalf of the rights of handicapped children in public schools has increased dramatically. However, readiness in the field to implement the mandates has not kept pace with the legal activity. Laws do not fulfill themselves; the fate of legislation often rests in the hands of state and local education personnel. Hence, the crux of the problem confronting us today is the need for massive in-service efforts to prepare teachers, administrators, board members and parents to work together in translating legal mandates into actual practice. And this is no easy task, especially when one considers the dynamic nature of the law. Regulations for implementing legislation often are in an evolutionary state, and courts continually reinterpret the intent of statutory provisions. Thus, individuals must engage in an ongoing process of reeducation concerning the legal requirements. A single in-service effort, although seemingly comprehensive at the time, will never suffice.

The following exercises are designed to address the pressing need for in-service activities dealing with federal legislation on behalf of handicapped children. The purpose of this module is to synthesize the vast amount of technical information on federal mandates and present the information in a meaningful format that can easily be adapted for use with teachers, administrators, board members or parents.

There is no attempt to offer an all-inclusive set of activities. Instead, the exercises should be viewed as a starter set of process models that can be adapted to the needs of specific target audiences and altered as the legal mandates dictate. Laws and regulations will change, and those responsible for in-service sessions must continually revise the content of the activities to reflect the most current laws, regulations and judicial interpretations.

Goals

The following activities are intended for use in workshop settings to increase the knowledge, to improve the attitudes, and to enhance the skills of persons working with handicapped children. Specifically, the activities are designed to:

A. Increase knowledge and understanding of (1) pertinent federal legislation, (2) federal regulations for implementing the laws, and (3) court decisions interpreting the laws.

B. Increase sensitivity to (1) potential problems in implementing the legal mandates, and (2) implication of the mandates for the total public educational program.

C. Enhance skills in (1) analyzing institutional forces that inhibit or facilitate the attainment of specific provisions of Public Law 94-142 and section 504 of the Rehabilitation Act of 1973, and (2) designing an action plan to implement selected legal mandates.

Overview

The activities described in this module may be sequenced and used in a one-day workshop or may be used individually in several short in-service sessions. The background information can be conveyed to participants in a number of ways. This material can be disseminated in print form prior to the in-service session with instructions for the participants to become familiar with the information or can be distributed at the beginning of the workshop for participants to read and discuss in small groups. A third option would be for the Training Facilitator to present the major points of background information in the form of an "Introductory Lecturette."

All information needed by a Training Facilitator is included in the description of each activity. The materials and activities described in the remainder of this module include:

II. Introductory Lecturette

III. Training Design

- Session 1: Introduction to Public Law 94-142 and Section 504
- Session 2: Designing an Action Plan for Public Law 94-142 and Section 504
- Session 3: Case Situations: How Did the Court Rule?
- Session 4: Implications of Public Law 94-142: The Non-handicapped Child

IV. Workshop Evaluation

II. INTRODUCTORY LECTURETTE

Until the 1950s, public school attendance was considered a privilege and not a right. Courts usually upheld school officials' authority to attach conditions to public school attendance. Consequently, many handicapped children who did not meet requirements established by the state were totally denied an education. For example, during the first third of this century, mentally normal blind children were barred from public schools in one state due to the "depressing and nauseating effect" such children would have on teachers and other students.

Gradually, however, public sentiment began to change regarding the treatment of handicapped citizens. Following the Second World War, parents of handicapped children started to organize and exert pressure to secure educational opportunities for these "special" children. Initially, consumer groups challenged educational inequities using nonlegal channels, often seeking the needed services for handicapped children on a district-by-district basis. Until the latter 1960s, advocates of handicapped children did not have much confidence in legal mandates as a means to enforce equal rights for these children. However, under the leadership of the Warren Supreme Court, citizens witnessed the expansion of civil rights protections for many vulnerable minority groups such as blacks, prisoners and aliens. Also, the movement to enforce consumer peotections at all levels of government motivated the coalitions

on behalf of handicapped children to view legal tools with renewed faith.

Litigation

The first legal victories took place in courtrooms with state and federal legislation following the judicial lead. The litigation on behalf of handicapped children has gone through several stages. The initial wave of cases dealt with the basic right for all children to attend public school (Stage 1). Then, legal mandates began to focus on the handicapped child's right to accurate classification (Stage II) and more recently on the child's right to appropriate instructional programs (Stage III).

Stage 1: Right to Access

Many of the cases involving handicapped children have relied on principles enunciated in the landmark desegregation case, Brown v. Board of Education of Topeka /347 U.S. 483 (1954)/ In this decision the United States Supreme Court recognized constitutional limitations on the state's power to control schools and thus started the wave of judicial intervention in the public school arena. In Brown the Supreme Court declared that when a state undertakes to provide education, "it is a right which must be made available to all on equal terms." Although courts have been grappling with the meaning of this Brown declaration for over two decades, recent cases involving handicapped children have forced the judiciary to take a stand regarding each child's basic right to attend school.

The first "right to access" case to receive widespread public attention was initiated in Pennsylvania. A class action suit on behalf of all retarded persons between the ages of six and twenty-one who were excluded from public education was brought under the Civil Rights Act of 1871 /Pennsylvania Association for Retarded Children v. Commonwealth, 343 F. Supp. 279 (E.D. Pa. 1972)/. The three-judge panel approved a consent agreement which stipulated that no child in Pennsylvania could be denied admission to a public school program or have his or her educational status changed without procedural due process of law. This consent degree established a basis for the argument that all children are educable in some fashion. The court noted that "a mentally retarded person can benefit at any point in his life and development from a program of education." This principle has been reiterated in almost every subsequent court decision dealing with a handicapped child's right to an education.

In Mills v. Board of Education /348 F. Supp. 866 (D.D.C. 1972)/, the federal district court in Washington D.C. followed the guidelines established in the Pennsylvania agreement and expanded the right to an appropriate public education beyond the mentally retarded, to all children alleged to be suffering from "mental, behavioral, emotional, or physical deficiencies." The court emphasized in Mills that no child eligible for a publicly supported education could be excluded from a regular public school assignment unless provided alternative educational services suited to the child's needs. Furthermore, the public interest in conserving funds could not justify the denial of an

education to a certain class of students. The court reasoned that if sufficient revenues were not available to finance the needed services and programs, funds must be expended equitably in such a manner that no child is entirely denied an education.

Although the United States Supreme Court has not dealt specifically with this issue of absolute educational deprivation, it has implied that the exclusion of selected students from public schools would not withstand constitutional scrutiny. In 1973, while sanctioning fiscal inequities among school districts within a state, the Supreme Court noted that the total denial of educational opportunities would impair an individual's constitutionally protected liberties [San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)]. In 1975, the Court was more definitive when it declared that all children have a state-created right to an education which cannot be impaired for even a short period of time without minimal procedural due process [Goss v. Lopez, 419 U.S. 565 1975)].

Even though the Federal Constitution does not expressly provide for the right to a public education, many state constitutions do guarantee such a right. For example, the Supreme Court of North Dakota ruled that a handicapped child's right to equal educational opportunity was guaranteed by the state constitution. School districts in North Dakota disputed the legal residence of a multiple handicapped child in order to determine which school district was liable for the child's tuition costs. In resolving the dispute, the court stated:

> We are satisfied that all children in North Dakota have the right (sic), under the State Constitution, to a public school education...Handicapped children are certainly entitled to no less than unhandicapped children under the explicit provisions of the Constitution. /In the interest of G.H., 218 N.W. 2d 441 (N.D. 1974)/.

Every state also has some statutory provision regarding special education, that is, education for handicapped children.

Stage II: Right to Accurate Classification

Although the basic right for every child at least to attend public school is being legally enforced, this right to school access can be a meaningless victory for the handicapped child if only custodial care is offered once the child enters the schoolhouse door. Mere school attendance does not assure that any educational benefits will accrue. Courts, therefore, have broadened their scope of inquiry to assess classification procedures used to place children in instructional programs.

The right of educators to make program assignments is not being challenged in the courts, but the procedures used and the bases for classifying students are being questioned and in some cases being subjected to strict judicial scrutiny under the equal protection clause of the fourteenth amendment. In the widely publicized decision, Hobson v. Hansen /269 F. Supp. 401 (1967), aff'd sub nom Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969)/, the use of achievement test scores to place students in various ability tracks was attacked as unconstitutional. Plaintiffs charged that the track system resulted in racial discrimination and placed "a dear price on teacher misjudgments."

The court evaluated the accuracy of the test instruments and the negative consequences resulting from assigning pupils to inappropriate instructional programs. As a result, the court in Washington, D.C. invalidated the track system because of its discriminatory impact on black students.

The use of test scores to classify students is especially crucial in situations involving placement in special education classes. If placement is incorrect, harmful psychological stigma may result. In several California cases plaintiffs demonstrated that group-administered intelligence tests unfairly assessed students' ability due to the racial, cultural, and linguistic bias of the tests /Covarrubias v. State Board of Education, C.A. No. C-70-394-S (S.D. Cal., 1972); Dianna v. State Board of Education, C.A. No. C-70-37 RPF (N.D. Cal. 1970)/. Similarly, in Massachusetts and Louisiana, some children who had been labeled as retarded were found to be of normal intelligence when retested with valid instruments. Thus, the federal courts instructed school authorities to submit plans for eliminating the discriminatory practices /Moses v. Washington Parish School Board, 303 F. Supp. 1340 (E.D. La. 1971); Lemon V. Bossier Parish School Board, 444 F.2d 1400 (5th Cir. 1971)/.

A case involving discriminatory classification practices which has received national attention originated in the San Francisco Public Schools. In this case plaintiffs sought an injunction restraining the use of intelligence tests for purposes of determining whether to place black students in educable mentally retarded classes. The federal court ruled that

such tests could not be used as the sole determinant of a special education placement and furthermore ordered periodic reevaluations of student assignments [Larry P. v. Riles, 343 F. Supp. 1310 (N.D. Cal. 1972), 502 F.2d 693 (1974)]. Subsequently, the temporary injunction was made a permanent prohibition against using intelligence tests to place students in classes for the mentally retarded [Larry P. v. Riles, No. C-71-2270 RFP (N.D. Cal. 1979)].

Stage III: Right to Appropriate Programs

In addition to the legal activity surrounding classification procedures, courts are now focusing attention on the pupil's right to appropriate instructional programs. Courts are forcing states to shoulder the responsibility for providing programs that are suitable to the special needs of handicapped children. Furthermore, if appropriate programs are not available in public schools, courts are requiring states to pay tuition for handicapped children to attend private schools.

Children with special needs other than physical or mental disabilities are also receiving judicial protection. For example, appropriate bilingual programs are being mandated for non-English-speaking students who have been functionally denied a meaningful education because they cannot benefit from instruction offered in English. In Lau v. Nichols the United States Supreme Court emphatically declared that "requiring students to acquire English skills on their own before they can hope to make any progress in school is to make

a mockery of public education" [414 U.S. 463 (1974)]. The Supreme Court also implied that because education is state-imposed, the curriculum offered must be appropriate to the needs of the students in order to be acceptable. In short, states are being required to provide suitable instruction for the Spanish-speaking child as well as the deaf child.

Legislation

Following the judicial lead, the United States Congress has enacted legislation to prohibit discrimination against handicapped citizens and to ensure suitable educational programs for handicapped children. As part of the Vocational Rehabilitation Act of 1973, Congress enacted Section 504 which provides that "no otherwise qualified handicapped individual in the United States. . . shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Initially, Congress defined the term "handicapped individual" solely in relationship to employment and the need for vocational rehabilitation. However, the following year, Congress amended the definition of "handicapped individual" for purposes of Section 504 and the other provisions of the Rehabilitation Act, removing the employability limitation. Hence, under Section 504, a "handicapped individual" is now defined as "any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment." With this amended definition, it became

clear that Section 504 was intended to forbid discrimination against all handicapped individuals, regardless of their need for or ability to benefit from vocational rehabilitation services.

Section 504 represents the first federal civil rights law protecting the rights of handicapped persons and reflects a national commitment to end discrimination on the basis of handicaps. The language of Section 504 is almost identical to the comparable nondiscrimination provisions of Title VI of the Civil Rights Act of 1964 (applying to racial discrimination) and Title IX of the Education Amendments of 1972 (applying to discrimination in education on the basis of sex). Section 504 establishes a mandate to end discrimination and to bring handicapped persons into the mainstream of American life. In drafting regulations to implement Seciton 504, it became apparent that different or special treatment of handicapped persons, because of their handicaps, may be necessary in a number of contexts in order to ensure equal opportunity. For example, a handicapped person in a wheelchair is not provided equal educational opportunity if admitted to a program that is offered only on the third floor of a building without elevators. Similarly, it is a cruel hoax to admit a deaf child to a public school classroom if no means are provided for the child to understand the teacher or to receive instruction. Thus, the regulations for Section 504 specify that architectural barriers for handicapped persons must be removed and that special services must be offered to ensure that handicapped individuals have equal access to programs.

The most pervasive piece of federal legislation on behalf of handicapped children is the Education for All Handicapped Children Act of 1975 (P.L. 94-142) which guarantees certain basic rights and protections to all such children. Under this law, each state applying for federal funds must provide a detailed blueprint outlining plans for providing a free, appropriate public education for all handicapped children. The plan must demonstrate that the state is committed to achieving special education and related services for all handicapped children ages 3 to 18 by September 1978, unless 3-5 and 18-21 age groups are exempted because of state law, practice or court decision. State and local education agencies are affected by the mandates of Public Law 94-142 regardless of their intent to apply for federal assistance under Part B of this Act. Consequently, many provisions of this law are destined to have an important impact on the entire public school program.

A major thrust of Public Law 94-142 is the identification, location, and evaluation of all children in need of special education. The state must outline the actual procedures to be used in the child identification process. The first priority is to locate and provide programs for the education of children who previously have been unserved. The next priority is to guarantee appropriate programs for those children who have been served improperly.

Another important feature of the law is the development of an individualized educational program for each handicapped

child. These programs must be tailored to the handicapped student's particular needs and capacities and be designed cooperatively by school officials who are qualified to provide or supervise such special instruction, the child's teacher, the child's parents or guardians, and where appropriate, the child. Each individualized program must be reviewed at least annually.

Public Law 94-142 guarantees several other important protections for handicapped children and their parents. The law mandates that evaluation material used in placing handicapped children in instructional programs must be prepared and administered so as not to be racially or culturally discriminatory. Tests used to classify students must be administered in the student's native tongue. Also, comprehensive personnel development programs, including in-service training for regular as well as special education teachers and support personnel, are required. Such staff development efforts will necessitate close cooperation between state and local education agencies and between special and regular educators. Public Law 94-142 also stipulates that school officials must provide parents with access to their child's records. However, the confidentiality of records must be respected. Any personally identifiable data collected by the state or local agency must be accessible only to parents and authorized personnel.

A provision of Public Law 94-142 which no doubt will have an important impact on public schools is the preschool incentive grant. States eligible for federal assistance can

apply for an additional $300.00 per child for handicapped children ages three to five who are being provided an appropriate public school program. However, as with all of the federal funds allocated under Public Law 94-142, these monies are to be used solely for excess costs related to educating handicapped children. In other words, a school district must spend equal amounts on handicapped and nonhandicapped children before any federal funds can be used for the special services required.

In order to comply with Public Law 94-142, school officials must implement elaborate due process procedures for all handicapped children in matters of identification, evaluation, and educational placement. Parents or guardians must receive notice of any comtemplated changes in the child's educational program, participate in the decision, and have the opportunity to initiate agency hearings and judicial proceedings to contest the treatment of their handicapped child. These due process procedures, however, need not create adversary relationships--on the contrary, such safeguards should ensure better programs for children and more open communication among all parties involved. The intent is to create an environment in which the interested parties can jointly participate in understanding the needs of the child, designing a plan to meet those needs, and assessing the effectiveness of the program designed.

One of the underlying themes of Public Law 94-142 is that handicapped children should be integrated into the regular

public school program where possible. This mandate that children must be placed in the least restrictive educational setting is grounded in the belief that assessment of each child must be a dynamic process which ensures that changes in the child's instructional program are made in an appropriate and timely fashion. The movement to mainstream handicapped and nonhandicapped children should change educators' orientation toward grouping practices. No longer can initial grouping decisions become permanent placements--one way tickets into instructional settings--with no provisions for reevaluation of the students' status.

Some concern has been voiced that overzealous attempts to carry out the least restrictive setting mandate will result in misguided efforts to educate handicapped children in classes with normal children or to provide similar programs for all pupils when special services actually are needed. Obviously, it would be detrimental for the handicapped child to be placed in a regular classroom unless the child's needs can be most appropriately addressed in such an environment.

Quite possibly the legal mandates on behalf of handicapped children will change educators' roles in implementing the total range of public school programs. For example, all students--not only the handicapped--may begin asserting their rights to individualized educational programs. In order for more than lip service to be given to this concept of individualized instruction, teachers will have to be retrained and additional resources will be needed. The elaborate accountability procedures legislated to monitor the progress of

handicapped children also could influence the total public school program. If educators must assess the handicapped child's level of performance, establish long-range goals and short-term objectives, conduct annual progress reviews, and document that such activities are properly carried out, should not ALL PUPILS be entitled to these services? Also, the procedural requisites being required when handicapped children are placed in special classes or have their educational status changed in any manner seem destined to alter the operation of public schools. Such procedural safeguards could end educators' traditional freedom to make unilateral decisions about instructional placements.

Many other provisions of Public Law 94-142 have similar implications for the education of nonhandicapped children. In order for the full services mandates to be implemented for ALL STUDENTS, a strong financial commitment from every level of government will be needed. Also, communication channels must be strengthened among special and regular educators, and efforts must be coordinated so that all individuals are working toward the common goal of upgrading instructional offerings for EVERY PUPIL.

Although massive gains have been made in securing the rights of handicapped children through legislation and litigation, these legal mandates cannot stand alone. The lingering question is whether citizens and educators will capitalize on the opportunity to make the promises become realities. For many years children have experienced frustration over aborted attempts to ensure equal educational opportunities.

Will the federal legislation on behalf of handicapped children result in additional disappointments, or will it signal a new era in protecting the rights of ALL CHILDREN? The challenge is before us, and we all have a role to play in determining the final outcome.

III. TRAINING DESIGN

Session I: Introduction to Public Law 94-142 and Section 504

A. Goals:

1. To increase knowledge and understanding of pertinent provisions of P.L. 94-142 and Section 504.
2. To increase knowledge and understanding of the regulations for implementing P.L. 94-142 and Section 504.

B. Process: The exercise takes place in three rounds and can be used with any number of participants. At least 1-1/2 hours should be allocated for this activity. In the first round, participants spend 15 minutes reacting individually to a questionnaire containing 12 questions pertaining to the federal legislation (pp. 20-21). Then, the participants form triads and discuss their answers to the questions for approximately 30 minutes. Finally, all participants are brought back together by the Training Facilitator for a total group discussion of the questions and answers. The Facilitator has a list of answers to the questionnaire in addition to "discussion tips" for the directed discussion period (see attachment).

C. Materials:

1. Questionnaire for each participant
2. Set of answers with the discussion tips for the Training Facilitator
3. Copy of the regulations for Section 504 and P.L. 94-142 to use for reference if needed

The Federal Mandates:
Introductory Questionnaire

1. According to recent estimates, what percentage of the nation's handicapped children are receiving appropriate educational services?

2. Does a school district have any obligation with respect to eliminating or preventing architectural barriers in public school buildings?

3. Section 504 is a Civil Rights Act. What does this mean?

4. Under Public Law 94-142, what persons are to be involved in the development of individualized educational programs (IEPs) for each handicapped child?

5. Is the IEP a legally enforcable contract?

6. What elements must the IEP include?

7. Define the term "least restrictive educational setting."

8. Must all handicapped children be mainstreamed with non-handicapped students?

9. What does the "excess cost" feature of Public Law 94-142 mean?

_____

10. Under federal mandates, what procedural steps must be followed before a handicapped student's educational placement can be changed?

_____

_____

11. Do parents have the right to access to their child's school records?

_____

12. If a handicapped child is placed in a private facility in order to receive appropriate services, must the parents pay for a portion of the tuition?

_____

The Federal Mandates:
Answers and Discussion Tips

1. <u>According to recent estimates, what percentage of the nation's handicapped children are receiving appropriate educational services</u>?

   In 1980, approximately 75%. In 1978, the estimate was 55%, and in 1950 it was 10%.

   <u>Discussion Tips</u>: Do you think that the federal mandate of full services to <u>all</u> handicapped children will be reached? What percentage of school age children are being identified as handicapped? (About 7% nationally in 1978 with over 9% in 26 states.)

2. <u>Does the school have any obligation with respect to eliminating or preventing architectural barriers in public school buildings</u>?

   Yes. The Federal Architectural Barriers Act of 1968 requires that buildings and facilities financed in whole or in part with federal funds meet certain accessibility standards. Also, Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal aid from discriminating against handicapped individuals. Therefore, barriers which deny a child access to a public school program would be prohibited under this section. Additionally, every state and many localities have enacted legislation requiring barrier-free design in facilities built with public funds. An inaccessible facility built after the effective date of such provisions would be subject to its sanctions. However, these mandates do not mean that all buildings must be renovated so that they can accommodate individuals with every type of physical handicap. Rather, it means that handicapped individuals must have access to an appropriate program in a barrier-free facility.

   <u>Discussion Tip</u>: In 1978, the National School Boards Association estimated that it would cost $1.7 billion to renovate buildings in order to meet the accessibility mandates. Assuming that this estimate is accurate, where will schools get the needed funds?

3. <u>Section 504 is a Civil Rights Act</u>. <u>What does this mean</u>?

   Section 504 is designed to eliminate discrimination on the basis of handicaps in any program or activity receiving federal financial assistance. The language contained in Section 504 is comparable to the nondiscrimination pro-

visions of Title VI of the Civil Rights Act of 1964 (applying to racial discrimination) and Title IX of the Educational Amendments of 1972 (applying to discrimination in education on the basis of sex). Section 504 establishes a mandate which must be followed by all agencies receiving federal funds. Failure to comply with Section 504 can result in the withdrawal of all federal assistance from the institution found to be in violation.

Discussion Tip: What is the relationship between Public Law 94-142 and Section 504?

4. Under Public Law 94-142, what persons are to be involved in the development of individualized educational programs (IEPs) for each handicapped child?

   (a) school officials who are qualified to provide or supervise special services,

   (b) the child's teacher,

   (c) the child's parents, guardian, or surrogate parent,

   (d) the child (if appropriate).

   Discussion tips: Under what circumstances would it be appropriate to include the child in developing the IEP?

   What rationale is offered for including each of the role groups in the planning process?

5. Is the IEP a legally enforceable contract?

   No. It is an agreement among involved parties that is to be used as a planning document. It is a management devise to link the child with appropriate services. Although educators are not held legally responsible for actually meeting the goals outlined in the plan, they can be held accountable for following the plan. If changes in the services for a child are contemplated, proper procedures including parental involvement should be followed. Any attempt to alter services without changing the individualized program might impair the child's rights that are guaranteed under Public Law 94-142.

   Discussion Tips: If the IEP were considered a legally enforceable contract, specifying that certain levels of learning must be attained, what would be the potential impact? Would educators become more caution in designing goals and objectives? Would such an interpretation of the IEP facilitate efforts to appropriately educate handicapped children?

6. What elements must the IEP include?

The written educational program must include:

(a) a statement of the child's present level of educational performance,

(b) a statement of annual goals and short-term instructional objectives,

(c) a statement of the specific educational services to be provided,

(d) a statement specifying the extent to which the child will be able to participate in regular education programs,

(e) the projected date for initiation of the special services and anticipated duration of the services, and

(f) appropriate evaluation procedures and schedules for determining at least annually whether the instructional objectives are being achieved.

Discussion Tips: Are all personnel who are to be involved in developing the IEP presently adequately prepared to engage in the planning process? If not, what additional training activities are needed?

7. Define the term "least restrictive educational setting."

The "least restrictive educational setting" refers to placement of handicapped children to the maximum extent appropriate in classrooms with nonhandicapped children. The least restrictive setting, of course, is the regular classroom with special services being provided for the handicapped child within this environment. Next on the continuum would be special instruction for the handicapped child for part of the day. Moving toward more restrictive models would be a self-contained special education classroom within the school, a special school, homebound programs, and finally, residential institutions.

Discussion Tips: Is the regular classroom the least restrictive setting for all children?

Do you feel that this "least restrictive setting" mandate has been misinterpreted? If so, how?

8. Must all handicapped children be mainstreamed with nonhandicapped students?

No. Public Law 94-142 mandates that special education services are to take place "to the maximum extent appropriate" in settings where children who are not handi-

capped are educated with handicapped children. The term "appropriate" is the key. In some situations, special classes, separate schools, or institutions constitute the least restrictive and most appropriate educational setting for certain handicapped children. However, the handicapped child should be isolated only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Discussion Tips: Do you know of misconceptions surrounding the term "mainstreaming?" What are some of the potential problems in implementing mainstreaming techniques?

9. What does the "excess cost" feature of Public Law 94-142 mean?

The intent of the excess cost provision is to insure that state and local education agencies provide the same support for handicapped children as they do for all other children and that the funds received under P.L. 94-142 are used to supplement the state and local commitment.

Discussion Tip: In school districts where a large number of handicapped students are totally unserved, what will be the state's fiscal obligation for these children before it can apply for federal assistance to meet the special needs of the students?

10. Under federal mandates, what procedural steps must be followed before a handicapped student's educational placement can be changed?

A due process hearing must be provided whenever there is a dispute between parents and school officials regarding the identification, evaluation, or placement of a handicapped child. Specifically, Public Law 94-142 outlines the following procedural protections:

(a) prior notice to parents and parental consent for changes in the educational placement of the child.

(b) opportunity for parental examination of the child's record.

(c) opportunity for parents to obtain an independent educational evaluation of the child.

(d) opportunity for parents to submit a complaint relating to the identification, evaluation, or placement of the child, and

(e) opportunity for parents to initiate agency hearings and judicial proceedings.

Discussion Tips: Are the procedural protections outlined in P.L. 94-142 currently being provided for nonhandicapped children? What are the implications of such requirements for the total school program?

11. Do parents have the right to see and obtain copies of their child's school records?

Parents of students under the age of 18 have a right to see, correct, obtain copies of, and control access to the records of their child under the guarantees of the Family Education Rights and Privacy Act. Each school is required to establish and publicize its procedures for providing parental access to records and for maintaining the confidentiality of personally identifiable information on students. Under Public Law 94-142, schools have the obligation to provide interpreters if necessary to translate student records into a parent's native language. Schools may charge parents for copies of their child's records but may not charge them for inspecting such records.

Discussion Tip: Do you feel that the current attention focused on school records has resulted in some useful information (as well as erroneous and unnecessary information) being purged from school records?

12. If a handicapped child is placed in a private facility in order to receive appropriate services, must the parents pay for a portion of the tuition?

No. The state is obligated to provide a free, appropriate education for handicapped children. Public Law 94-142, Section 504 and judicial decisions, in consert, mandate that such services be provided without cost to the handicapped child's parents. If an appropriate program is not available for the child in a public school, the state is obligated to bear the expense of enrolling the child in a private facility.

Discussion Tip: Where does the school's obligation end? Must year round services be provided? If the most appropriate setting is in another state, who must bear the cost of enrolling the handicapped child?

Session II: Designing an Action Plan for Public Law 94-142 and Section 504

A. Goals:

1. To enhance skills in identifying institutional forces that inhibit and facilitate the attainment of a selected provision of P.L. 94-142 or Section 504.

2. To improve skills in designing an action plan to implement the mandate.

B. Process: This activity takes place in two or three rounds and can be used with any number of participants. One hour is allocated for rounds I and II, and at least one hour is allocated for round III. During round I (approximately 20 minutes), the total group engages in a discussion of the mandates of P.L. 94-142 and Section 504. The outcome of round I is to reach agreement on the three provisions of P.L. 94-142 or Section 504 that will necessitate the greatest adjustments on the part of school personnel. Each participant is given a summary sheet of the major provisions of P.L. 94-142 and section 504 to use for reference during the initial discussion (pp.29-31). After 10-15 minutes of open discussion, the Training Facilitator should guide the group toward closure and post the three provisions selected on newsprint. Each participant then chooses one of the provisions to address in depth during rounds II and III. Participants self-select small groups according to the provisions chosen. Since groups should contain no more than five

members, there may be several groups addressing one provision. In round II, each small group designates a leader and recorder. Then, for 15 minutes the group members brainstorm regarding the institutional forces inhibiting and facilitating the attainment of the selected provision of P.L. 94-142 or Section 504. All suggestions should be recorded on the Force Field Analysis Sheet (pp. 32), and the general rules for brainstorming should be followed. The Training Facilitator can conclude the exercise at the end of round II by instructing all small groups to come back together to make reports to the total group (10-15 minutes). However, if time permits, a third round can be pursued. During this round, participants develop an action plan for implementing the selected provision and record specific objectives and activities (pp. 33). Participants assess the institutional resources and personnel needed in order to translate the legal mandates into practice. At the conclusion of this activity, each small group should report its plan to all other participants.

C. Materials:

1. Newsprint and markers
2. List of major provisions of P.L. 94-142 and Section 504 for each participant
3. Force Field Analysis sheet for each participant
4. Objectives/Activities sheet for each small group

Major Provisions of Public Law 94-142

In essence, Public Law 94-142 guarantees a free, appropriate public education for all handicapped children. Among the major provisions of the Act are the following:

1. Individualized educational programs must be developed for each handicapped child.

2. Policies and procedures must be established to safeguard due process rights of parents and children.

3. Handicapped children must be placed in the least restrictive educational setting, which means educating handicapped children with nonhandicapped children to the extent possible.

4. Nondiscriminatory tests and other materials must be used in evaluating a child's level of achievement for placement purposes.

5. Parents must have access to their child's records, and the confidentiality of such information must be respected.

6. One state agency must be accountable for ensuring that all provisions of the law are properly implemented by other agencies in the state serving handicapped children.

7. Children who are not currently receiving an education are to be given first priority in the effort to make education available to all handicapped children. Second priority will be given the most severely handicapped within each exceptionality area who are receiving an inadequate education.

8. The state and local education agencies are required to have comprehensive personnel development programs which include inservice training for regular and special education and ancillary personnel.

Major Provisions of Section 504
of the
Rehabilitation Act 1973

Section 504 defines and forbids acts of discrimination against qualified handicapped persons in employment and in the operation of programs and activities receiving federal assistance. The Act:

1. Defines handicapped person as one who has a physical or mental impairment that substantially limits one or more major life activity, has a record of that type of impairment, or is regarded as having that impairment, including drug addiction and alcoholism.

2. Bars employment discrimination by recipients of HEW assistance in recruitment, hiring, compensation, job assignment and classification, and fringe benefits. It also requires employers to make reasonable accommodation to qualified handicapped applicants or employees unless it can be demonstrated that the accommodation would impose an undue hardship on the employer.

3. Requires program accessibility. All new facilities are required to be constructed so as to be readily accessible to and usable by handicapped persons. Every existing facility need not be made physically accessible, but all recipients must ensure that programs conducted in those facilities are made accessible. While flexibility is allowed in choosing methods that in fact make programs in existing facilities accessible, structural changes in such facilities must be undertaken if no other means of assuring program accessibility is available.

4. Proscribes discrimination against handicapped persons in recruitment, admission and treatment after admission in post-secondary education. Colleges and universities are required to make reasonable adjustments to permit handicapped persons to fulfill academic requirements, and to ensure that they are not effectively excluded from programs because of the absence of auxiliary aids. Groups of colleges may not establish consortia exclusively for handicapped students.

5. Forbids discrimination in the provision of social service programs and requires larger recipients to provide auxiliary aids to handicapped individuals where necessary and ensure program/service accessibility.

6. Requires, basically, that recipients operating public education programs provide a free appropriate education to each qualified handicapped child and in the most normal setting

appropriate. The regulations also set forth evaluation requirements designed to ensure the proper classification and placement of handicapped children, and due process procedures for resolving disputes over placement of students. This section is closely coordinated with Public Law 94-142.

Force Field Analysis Sheet

Selected Provisions of P.L. 94-142 or Section 504:_____

_____

_____

_____

Forces that Facilitate Attaining the Provision	Forces that Inhibit Attaining the Provision

Objectives/Activities Sheet

Selected Provision of P.L. 94-142 or Section 504_____

_____

_____

_____

Objective 1: _____

_____

_____

Activities: _____

_____

_____

Objective 2: _____

_____

_____

Activities: _____

_____

_____

Objective 3: _____

_____

_____

Activities: _____

_____

_____

_____

Session III: Case Situations ("How did the court rule?")

A. Goals:

1. To increase sensitivity toward the potential problems in implementing P.L. 94-142 and Section 504.
2. To foster understanding of the law's implications for the total public educational program.

B. Process: The exercise takes place in two rounds and can be used with any number of participants. Initially, participants are divided into groups of four. The Training Facilitator gives each participant a sheet containing descriptions of 5 to 10 case situations (each about a paragraph long). The descriptions do not include the courts' holdings (pp. 38-40). For 15-25 minutes the participants discuss the various situations, attempting to reach group consensus on how the court ruled. Participants should be encouraged to use their knowledge of the guarantees of Section 504 and P.L. 94-142 in reaching their decisions. After most small groups have discussed each case, all participants are brought back together for a general discussion of the cases. The Training Facilitator describes the actual ruling and then leads a discussion regarding the implications of the case. The Training Facilitator has a list of discussion questions to use in guiding participants to explore the potential impact of various provisions of the federal legislation (pp. 36-37).

C. Materials:

1. List of 5-10 case summaries (without the holdings) for each participant

2. Answer sheet and discussion questions for the Training Facilitator

How Did the Court Rule?
(Sample Case Situations)

1. Parents of several severly handicapped children challenged Pennsylvania's administrative regulation limiting public school programs to 180 days per year. Plaintiffs asserted that certain handicapped children were entitled to extended year programs at public expense under the guarantees of Public Law 94-142. How did the court rule?

2. Parents of a hearing-impaired child brought suit against the school district for failing to provide a sign language interpreter for the child in the regular classroom. Although the child was making above average progress without an interpreter, plaintiffs asserted that she was entitled to special assistance to enable her to maximize her potential. How did the court rule?

3. Plaintiffs asserted that black children had been inaccurately labeled as mentally retarded based on the results of racially and culturally biased intelligence tests. Plaintiffs asked that falsely labeled children be removed from classes for the mentally retarded and that school officials be prevented from using intelligence tests as the sole criterion for determining educational placements. How did the court rule?

4. At age five, a student's I.Q. was assessed by the school psychologist using a test that required verbal responses despite the child's severe speech defect. He scored one point below the score required for placement in a regular class. The psychologist's report recommended reassessment of the child's intelligence within two years of the original evaluation, but he was never retested and was instructed in classes for the mentally retarded for twelve years. After high school graduation, he was required to have his I.Q. reassessed in order to continue receiving social security payments beyond his eighteenth birthday. At that time, he scored over 100, and thus became ineligible to remain in the occupational training program for the retarded. He sued the New York school district for damages due to alleged instructional negligence. How did the court rule?

5. A student with severe learning and emotional disabilities was involved in a disruptive incident at school. A disciplinary hearing was scheduled to determine whether or not the student should be expelled. An injunction was sought to prevent the expulsion hearing. Plaintiffs alleged that the procedures outlined in Public Law 94-142 had to be followed in reviewing the child's educational program and determining an alternative educational placement for him. How did the court rule?

6. A school district placed a multiply handicapped teenage boy in a private residential treatment facility so he could receive appropriate medical, psychological, and educational services. Subsequently, the private facility discharged the student because it could no longer deal with his emotional and medical problems. The school district then asserted that while the student's emotional problems necessitated a residential treatment, his educational needs could be met in a special day program within the school district. It further contended that the child's emotional needs, necessitating residential care, were not the responsibility of the public school. Parents brought suit, alleging that the school district was responsible for providing a residential placement for the child. How did the court rule?

Answers and Discussion Questions
How Did the Court Rule?
(Sample Case Situations)

1. The federal district court invalidated the Pennsylvania administrative regulation. The court reasoned that the 180-day restriction violated Public Law 94-142 by interfering with the federally-mandated goal of maximizing the self-sufficiency of all handicapped children. The Third Circuit Court of Appeals affirmed the district court's holding, but differed as to rationale. The appellate court interpreted Public Law 94-142 as placing the responsibility on the state and local education agencies to devise individual goals and means to attain them for each handicapped child. Accordingly, the court concluded that the 180-day rule precluded the formulation of appropriate goals and programs for severely handicapped children in need of extended year services. Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979), modified and remanded, Nos. 78-1032, 78-1033, 78-0172 (3d Cir. 1980).

   Discussion Questions:

   (a) What are the fiscal implications of this ruling?

   (b) Do you think other groups of students with special needs (e.g., English-deficient, culturally disadvantaged) will begin making similar demands for extended year programs?

2. The Second Circuit Court of Appeals affirmed the federal district court's conclusion that the child was entitled to a sign language interpreter under Public Law 94-142. The district court reasoned that although the child was making satisfactory progress without an interpreter, she would be able to fulfill her potential commensurate with the opportunity provided for nonhandicapped students if provided special assistance. In affirming the decision, the appellate court cautioned that its holding was limited to this particular child and set of circumstances and should not be used as precedent beyond this case. Rowley v. Board of Educ. of the Hendrick Hudson Central School Dist., 483 F. Supp. 528 (S.D.N.Y. 1980), aff'd No. 80-7098 (2d. Cir. 1980).

   Discussion Questions:

   (a) What constitutes an appropriate program for a handicapped child? Must it be the "best" program available or will a minimally adequate program satisfy legal mandates?

(b) Should all students be entitled to educational programs and services that maximize their potential?

3. Litigation in this case has been in progress since 1971. Initially the suit was brought on behalf of six black children in San Francisco, but later the suit was expanded into a class action on behalf of black students in the entire state. In 1972 /343 F. Supp. 3106 (N.D. Cal. 1972), aff'd 502 F.2d 693 (9th Cir. 1974)/ the federal district court issued a preliminary injunction to prevent the placement of black children in classes for mentally retarded on the basis of the intelligence tests as currently used. The temporary injunction subsequently was made a permanent prohibition against using intelligence tests to place students in classes for the mentally retarded. Larry P. v. Riles, No. C-71-2270 RFP (N.D. Cal. 1979).

Discussion Questions:

(a) What provisions of P.L. 94-142 are particularly pertinent to the allegations raised in this case?

(b) Do you think the use of intelligence tests to place students in special education classes eventually will be barred in other jurisdictions?

4. The trial court and appeals court awarded the student damages. In distinguishing this case from previous educational malpractice suits, the appellate court reasoned that school personnel committed affirmative acts of negligence in ignoring the psychologist's report and erroneously instructing the student in classes for the retarded. Concluding that these acts of negligence resulted in the student being unable to earn a living, the appeals court awarded him $500,000 damages. However, the New York high court reversed the lower court rulings and dismissed the complaint. The court concluded that instructional negligence claims, as a matter of public policy, should not be entertained by the judiciary. Instead, the court reasoned that such allegations should be handled within the administrative appeals network of the state educational system. Hoffman v. Board of Educ. of the City of New York, 410 N.Y.S.2d. 99 (App. Div. 1978), rev'd 424 N.Y.SS 2d 376 (Ct. App. 1979).

Discussion Questions:

(a) What types of instructional negligence suits are likely to be initiated under Public Law 94-142?

(b) Do you think such suits will be more successful than previous educational malpractice claims?

5. The federal district court granted the preliminary injunction to prevent the expulsion hearing from taking place. The court

reasoned that the child would suffer irreparable injury by being denied an appropriate special education. The court noted that a disruptive handicapped student can be transferred to an appropriate, more restrictive environment after a full review of the child's case. Recognizing that handicapped children are not immune from the disciplinary process, the court held that decisions must be made in conformity with the statutory right to an appropriate education in the least restrictive environment. Stuart v. Nappi, 433 F. Supp. 1235 (D. Conn. 1978).

Discussion Questions:

(a) Can a handicapped student be expelled if the disruptive behavior is not related to the handicap?

(b) Is there a double standard for handicapped and nonhandicapped children in connection with disciplinary procedures?

6. The federal district court concluded that the student required a residential placement and that the school district was responsible for assuming the costs of such placement. Noting that the child's educational needs were closely intertwined with his educational needs, the court concluded that it could not realistically attempt to separate them. The court relied on the child's federal right to an appropriate educational placement in concluding that the school district must place him in a residential academic program with necessary psychiatric, psychological, and medical services. North v. District of Columbia Bd. of Educ., 471 F. Supp. 136 (D.D.C. 1979).

Discussion Questions:

(a) Does this decision go beyond the requirements of P.L. 94-142, since school districts are not required to pay for medical services (other than for diagnostic purposes) under the Act?

(b) What other types of noneducation services must school districts provide for handicapped children (e.g., catheterization)?

Session IV: Implications of 94-142: The Non-Handicapped Child

A. Goal:

To increase sensitivity regarding the implications of P.L. 94-142 for all public school students.

B. Process: This exercise takes place in two stages and can be used with any number of participants. Initially, the Training Facilitator reviews the major provisions of Public Law 94-142. Participants are instructed that their task is to apply these provisions dealing with handicapped students to the educational programs for all pupils (i.e., Is a double standard being instituted or will nonhandicapped students be able to use the guarantees outlined in P.L. 94-142 to evoke changes in educational offerings for everyone?). Each participant is handed a 5 x 7 notecard with one of the following provisions written at the top of the card:

1. Individualized educational programs must be designed and monitored for each handicapped child.
2. Procedural due process must be provided for handicapped children before any changes in their educational placements are made.
3. Tests and other materials or methods used to evaluate a child's special needs must be racially and culturally nondiscriminatory.
4. If appropriate educational services for the handicapped child are not available in the public forum, the state must take provisions for the child to obtain the needed services in a private facility.

Participants are instructed to use one side of the card and to record implications of the provision for all children. Participants work individually for five minutes and then the Training Facilitator requests everyone exchange cards, being

certain each participant gets a card with a different provision. Again, participants record implications of the provision for five minutes, using the reverse side of the card. Then the Training Facilitator collects the notecards and instructs the participants to form groups of four. One notecard for each of the four provisions is given to each group. The groups are asked to designate leaders and recorders. Groups are then instructed to discuss the information on the the cards and to add to the items, thus compiling a master list of implications for each provision. At least 30 minutes should be allocated for this small group activity. To culminate the exercise, all groups are brought back together to report to the total group. The Training Facilitator directs the reporting process (taking one provision at a time) and leads a discussion regarding the implications identified that are perceived as having the greatest potential impact on the entire public educational system.

C. Materials:

1. 5 x 7 notecards with one of four provisions of P.L. 94-142 written across the top
2. Discussion guide for the Training Facilitator (pp. 43-44)

Discussion Guide

If the following issues do not surface among the reports from the small groups, they should be brought out during the general discussion period.

1. Is released time for teachers necessary in order for the individualized educational programs to be properly developed? If so, where will school districts secure the funds for such released time?

2. What would be a realistic pupil-teacher ratio if individualized educational programs were to be implemented for all students in public schools?

3. Do you foresee potential conflicts between negotiated contracts of teachers' organizations and the provisions of Public Law 94-142? If so, what provisions seem likely to be contested? Will P.L. 94-142 or a negotiated contract prevail if there is a conflict?

4. Do you think that other special interest groups will try to capitalize on the guarantees outlined in P.L. 94-142? If so, what groups?

5. Are all tracking schemes presently used in secondary schools likely to come under attack due to the federal mandates on behalf of handicapped children? Why or why not?

6. Advocates of talented and gifted children are trying to get the definition of exceptional children expanded to cover these categories of students under the guarantees of P.L. 94-142. What are the implications for the public school program if such efforts are successful?

7. Some educators contend that conflicts between professional and parental judgments over the most appropriate placement for a child usually result in parental wishes prevailing. Do you agree? Are any procedural protections afforded to educators (on behalf of the interests of the child) under the federal mandates?

8. Some advocates of nonhandicapped children are contending that the rights of such children are being impaired because teachers are spending too much time attending to the special needs of handicapped children? Do you agree? What potential legal issues are involved in such claims?

9. Is the requirement that nondiscriminatory tests must be used in the evaluation of handicapped children a realistic one? Are educators in agreement as to which tests are actually

bias free? Do you think that federal mandates on behalf of handicapped children will eventually result in a moratorium on all group-administered testing practices?

10. Do claims of reverse discrimination involving alleged preferential treatment of handicapped children pose potential legal threats?

Other Training Activities

Several other training activities can be used in conjunction with or instead of the exercises described in this section. Such activities might include:

A. An exercise in which participants compare the provisions of the federal legislation with their own state laws. The National Association of State Directors of Special Education (NASDSE) publication, An Analysis of P.L. 94-142, might be useful for this purpose.

B. A simulation in which participants role play the various stages of the appeals process in which the placement of a particular handicapped student is being contested.

C. An exercise in which participants select certain decision-making activities that effect the education of handicapped children (e.g., initial evaluation of a handicapped student's special needs, placement of the child, review of the child's progress, hiring of special education personnel) and discuss the role of groups that should be involved in the decision-making process.

IV. EVALUATION

All training activities should include an evaluation component. The exercises described in this module have been designed so that they force interaction among participants and require some written product to be submitted to the Training Facilitator. Thus, for some of the sessions a simple feedback form, such as the one which follows, will provide the additional evaluation data needed.

However, if the Training Facilitator wishes to gather more extensive information on the merits of each exercise, the following activities might be used at the conclusion of each session:

A. For Session I, select five items from the questionnaire. Ask participants to respond in writing to the items after the discussion stage of the exercise (15 minutes).

B. For Session II, ask participants to list the major provisions of P.L. 94-142 and Section 504 (10 minutes). An alternative evaluation technique would be to have small groups exchange "action plans" and critique them. Questions such as the following should be explored by the groups:

    1. Is the action plan feasible?
    2. Have all institutional barriers and resources been considered?

C. For Session III, pose factual situations similar to several of the cases that were discussed and have participants indicate in writing their assessment of how

the court ruled (10 minutes).

D. For Session IV, have participants write three implications (perceived to be of greatest importance) for each of the identified provisions of P.L. 94-142 (10 minutes).

In addition to an evaluation activity for each session, Training Facilitators may wish to use a pre and post-test to evaluate the cognitive gains made by participants as a result of the total workshop experience. Items for such a test should be selected according to the objectives of the workshop and the specific information that has been emphasized during the sessions.

Evaluation Form
(Figure 9)

1. The activity was:

of little value		somewhat helpful		very beneficial
/	/	/	/	/

2. Directions were:

very confusing		adequate		extremely clear
/	/	/	/	/

3. The small group discussion was:

a waste of time		somewhat interesting		extremely interesting
/	/	/	/	/

4. Time allowed for the activity was:

too short		appropriate		too long
/	/	/	/	/

5. This exercise would be a useful training activity for:

____special education teachers ____school board members

____regular education teachers ____parents

____administrators

6. Comments:

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